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IN THE UNITED STATES DISTRICT COURT  
 THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

PACIFIC BELL TELEPHONE COMPANY  
 d/b/a AT&T CALIFORNIA,

Plaintiff,

v.

MICHAEL R. PEEVEY, TIMOTHY ALAN  
 SIMON, MIKE FLORIO, and CATHERINE,  
 J.K. SANDOVAL, IN THEIR OFFICIAL  
 CAPACITIES AS COMMISSIONERS OF THE  
 CALIFORNIA PUBLIC UTILITIES  
 COMMISSION, AND NOT AS  
 INDIVIDUALS, and XO COMMUNICATIONS  
 SERVICES, INC.,

Defendant.

) Case No. CV 11-0970 CRB

) **SECOND STIPULATION AND**  
 ) **~~PROPOSED~~ ORDER TO HOLD CASE**  
 ) **IN FURTHER ABEYANCE AND**  
 ) **CONTINUE ALL PENDING DEADLINES**  
 ) **AND INITIAL CASE MANAGEMENT**  
 ) **ACTION FROM THE CALIFORNIA**  
 ) **PUBLIC UTILITIES COMMISSION**

) **[Civil L.R. 6-1(b) and 6-2]**

) **Trial Date: None**

Pursuant to Civil Local Rules 6-1(b) and 6-2 of the United States District Court for the Northern District of California and Standing Order 4 of the Honorable Charles R. Breyer, it is hereby stipulated by and among Plaintiff Pacific Bell Company d/b/a AT&T California ("AT&T California") and Defendants, Michael R. Peevey, Timothy Alan Simon, Mike Florio, Catherine J.K. Sandoval, in their official capacities as Commissioners of the California Public Utilities Commission ("CPUC"), and XO Communications Services, Inc. ("XO") (collectively the

1 “Parties”), by and through their respective counsel or record, as follows:

2 1. This case shall be held in further abeyance for a period of 180 days from September  
3 6, 2011 in order to give the CPUC an opportunity to rule on AT&T California’s petition for  
4 modification filed on August 16, 2011 in the underlying CPUC docket, as described *infra*.

5 2. This case was previously held in abeyance in order to allow the CPUC to rule on  
6 AT&T California’s application for rehearing of the CPUC’s original decision (D.10-07-005),  
7 which was the subject of AT&T California’s Complaint herein. On July 18, 2011, the CPUC  
8 issued an “Order Modifying Decision,” D.11-07-023, that denied rehearing but modified its prior  
9 decision.

10 3. On August 16, 2011, AT&T California filed a petition for modification of the  
11 CPUC’s decision on rehearing, D.11-07-023, and the result of that petition could affect the issues  
12 on appeal here and/or benefit the Court and Parties in their analysis of the issues in dispute.

13 4. In consideration of these developments, the Parties agree that holding this action in  
14 further abeyance for a limited period of time is prudent.

15 5. Pursuant to this stipulated period of abeyance, all of the Parties’ respective rights  
16 shall be preserved for the 180 day abeyance period, including but not limited to the right of  
17 defendants CPUC and XO to answer or otherwise respond to AT&T California’s Complaint or  
18 amended complaint, if filed.

19 6. This Stipulation would alter certain preliminary deadlines established by this Court,  
20 including the obligation to meet and confer to discuss preliminary case management and  
21 scheduling issues, as well as the obligation to file a Joint Case Management Statement in advance  
22 of the Case Management Conference currently scheduled for October 21, 2011. For this reason,  
23 the Parties stipulate and request of this Court that all of the following dates and deadlines be  
24 extended as follows:

25 a. The September 6, 2011 deadline for Defendants CPUC and XO to answer  
26 or otherwise respond to AT&T’s Complaint shall be extended to March 6, 2012 or 30 days after  
27 AT&T California’s filing and service of any amended complaint, whichever is later.

28 b. The Initial Case Management Conference scheduled for Friday, October 21,

2011 shall be continued to Friday, April 20, 2012 at 8:30 a.m. in Courtroom 8, 19<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, California, or as soon thereafter as is convenient for the Court.

c. The September 21, 2011 deadline for lead trial counsel to meet and confer in advance of the Initial Case Management Conference, shall be continued to March 21, 2012.

d. The October 14, 2011 deadline for the Parties to file a Joint Case Management Statement shall be continued to April 13, 2012.

e. The September 30, 2011 deadline for the Parties to do the following shall be continued to March 30, 2012:

i. meet and confer re: early settlement, ADR process selection, and discovery plan;

ii. file ADR Certification signed by Parties and Counsel;

iii. file either Stipulation to ADR Process or Notices of Need for ADR Phone Conference.

This is the second stipulated time modification in this case, as set forth *supra*. No trial date has been set, so this extension will not require that a trial date be rescheduled, but it will require that the Initial Case Management Conference and related deadlines be rescheduled, as set forth *supra*.

Pursuant to Section X of Northern District of California General Order 45, counsel for AT&T California attests that it has obtained concurrence in the filing of this document from Mr. Joseph Addiego, counsel for XO, and Ms. Laura Gasser, counsel for CPUC, on August 17, 2011.

1 IT IS SO STIPULATED.

2 DATED this 17th day of August 2011.

3 PACIFIC BELL TELEPHONE COMPANY,  
4 d/b/a AT&T CALIFORNIA

5 By: /s/  
6 David Discher

7 Attorney for Plaintiff Pacific Bell Telephone  
8 Company, d/b/a AT&T California

9 DAVIS WRIGHT TREMAINE LLP

10 By: /s/  
11 Joseph E. Addiego III

12 Attorneys for Defendant XO Communications  
13 Services, Inc.

14 CALIFORNIA PUBLIC UTILITIES  
15 COMMISSION

16 By: /s/  
17 Laura Gasser

18 Attorneys for Defendant California Public  
19 Utilities Commissioners Peevey, Simon, Florio,  
20 and Sandoval

21 **ORDER**

22 Pursuant to stipulation, the foregoing is approved and IT IS SO ORDERED.

23 IT IS FURTHER ORDERED that the October 21, 2011 Initial Case Management  
24 Conference shall be rescheduled to April 20, 2012 at 8:30 a.m. in Courtroom 8, 19<sup>th</sup> Floor, 450  
25 Golden Gate Avenue, San Francisco, California.

26 IT IS SO ORDERED.

27 DATED: August 19, 2011

28 THE HONORABLE CHARLES R. BREYER  
UNITED STATES DISTRICT COURT

